

ISSUED: September 20, 2002

D.T.E. 02-13-G

Investigation by the Department of Telecommunications and Energy on its own motion, pursuant to G.L. c. 159, §§ 12, 32, and 39 and G.L. c. 166, §§ 11 and 12, regarding the failure by several individually named common carriers of telecommunications services to file their annual returns for the year 2000 by March 31, 2001 and to pay statutory forfeitures.

In the Matter of

Norstar Communications, Inc. d/b/a Business Savings Plan	D.T.E. 02-13-19
Enhanced Communications Network, Inc.	D.T.E. 02-13-45
Jirehcom, Inc.	D.T.E. 02-13-46
Long Distance Billing Services, Inc.	D.T.E. 02-13-47
Maxtel USA, Inc.	D.T.E. 02-13-48

I. INTRODUCTION

The Department requires all common carriers that are engaged in the “transmission of intelligence within the commonwealth,” i.e. telecommunications services, to be registered by having an approved tariff on file with the Department as well as a current statement of business operations. Regulatory Treatment of Telecommunications Common Carriers Within the Commonwealth of Massachusetts, D.P.U. 93-98, at 12 (1994); see also G.L. c. 159, § 12. Registered common carriers also must file with the Department annual returns for the year ended December 31, by March 31 of the following year, in a format prescribed by the Department. G.L. c. 159, §§ 12, 32; G.L. c. 166, § 11. Therefore, the deadline for filing annual returns for the year 2000 was March 31, 2001, absent any extension that the Department may grant for good cause. G.L. c. 159, § 32; G.L. c. 166, § 11.

Any telephone company “doing business in the [C]ommonwealth” that neglects to file the required annual return forfeits to the Commonwealth five dollars per day for the first fifteen days that the neglect continues, ten dollars per day for the next fifteen days, and fifteen dollars per day for each day thereafter. G.L. c. 166, §§ 11, 12. Further, if the Department determines that a telephone company “unreasonably refuses or neglects to make such return,” the company shall forfeit up to \$500 in addition. Id. If, in the judgment of the Department, a common carrier neglects to make returns as required by law, the Department is obligated to present the facts to the Attorney General for action. G.L. c. 159, § 39.

A significant number of telephone companies failed to file annual returns on a timely basis and pay statutory forfeitures to the Commonwealth for the year 2000. Therefore, on April 8, 2002, the Department opened separate investigations into the failure by each of these companies to file annual returns or to pay the statutory forfeiture. Although this Order pertains to several proceedings with nearly identical facts, the dockets are not consolidated; thus, the findings of fact issued today are applicable to each company, individually.

II. PROCEDURAL HISTORY

The Department opened investigations regarding the following companies: Norstar Communications, Inc. d/b/a Business Savings Plan, docketed as D.T.E. 02-13-19; Enhanced Communications Network, Inc., docketed as D.T.E. 02-13-45; Jirehcom, Inc., docketed as D.T.E. 02-13-46; Long Distance Billing Services, Inc., docketed as D.T.E. 02-13-47; and Maxtel USA, Inc., docketed as D.T.E. 02-13-48. Each of these companies filed its annual return for the year 2000 late, but did not pay the statutory forfeiture to the Commonwealth for late filing, pursuant to G.L. c. 166, § 12. Pursuant to notice duly issued, the Department conducted public hearings and evidentiary hearings in each of these proceedings on April 29, 2002. No party entered an appearance or filed comments. The evidentiary record in each proceeding contains three exhibits.¹

¹ Because the exhibits in each proceeding are essentially identical in nature, all references to exhibits in this Order will omit the docket number and simply refer to the corresponding exhibit number; i.e. Exhibit 1.

III. ANALYSIS

Each company that this Order addresses is a registered common carrier of telecommunications services because each company has an approved tariff and statement of business operations on file with the Department. D.P.U. 93-98, at 12. Each company filed its annual return for the year 2000 after March 31, 2001, however, each reported that it had no intrastate revenues for the year 2000.

Because these companies are registered common carriers, they are obligated to file annual returns in a timely manner, i.e. in the form prescribed by the Department's Telecommunications Division no later than March 31 in the year following the reporting period, unless they withdraw their registration with the Department, G.L. c. 159, § 32; D.T.E. 93-98, at 16. The Department, however, does not require registered common carriers that have no intrastate revenues to file returns in the same form required of companies that do have intrastate revenues, because the companies are not "doing business in the commonwealth" for the purpose of reporting revenues. Cf. G.L. c. 166, § 11. Rather, the Department currently requires registered common carriers that have no intrastate revenues to file returns in the form of an affidavit attesting that the carrier did not earn intrastate revenues during the reporting year. Cf. G.L. c. 159, § 32.

We find that because these companies did not earn intrastate revenues for the reporting period, they were not "doing business in the commonwealth" during the year 2000 for the purposes of G.L. c. 166, §§ 11, 12, and the forfeitures required to be paid to the

Commonwealth, pursuant to G.L. c. 166, § 12, do not apply.² Nevertheless, these companies were obligated to attest that they did not have intrastate revenues during the year 2000.

G.L. c. 159, § 32. The filed annual returns, albeit late, make the required attestation.

IV. ORDER

After notice, opportunity for comment, and due consideration, it is

ORDERED that the findings reached herein are applicable to Norstar Communications Inc. d/b/a Business Savings Plan individually in D.T.E. 02-13-19; and it is

FURTHER ORDERED that the findings reached herein are applicable to Enhanced Communications Network, Inc. individually in D.T.E. 02-13-45; and it is

FURTHER ORDERED that the findings reached herein are applicable to Jirehcom, Inc. individually in D.T.E. 02-13-46; and it is

FURTHER ORDERED that the findings reached herein are applicable to Long Distance Billing Services, Inc. individually in D.T.E. 02-13-47; and it is

² The Department further finds that the additional \$500 forfeiture for unreasonable refusal or neglect to file is not applicable for the same reason and because these companies have filed their returns. G.L. c. 166, § 12.

FURTHER ORDERED that the findings reached herein are applicable to
Maxtel USA, Inc. individually in D.T.E. 02-13-48; and it is

By Order of the Department,

_____/s_____
Paul B. Vasington, Chairman

_____/s_____
James Connelly, Commissioner

_____/s_____
W. Robert Keating, Commissioner

_____/s_____
Eugene J. Sullivan, Jr., Commissioner

_____/s_____
Deirdre K. Manning, Commissioner

Appeal as to matters of law from any final decision, order or ruling of the Commission may be taken to the Supreme Judicial Court by an aggrieved party in interest by the filing of a written petition praying that the Order of the Commission be modified or set aside in whole or in part.

Such petition for appeal shall be filed with the Secretary of the Commission within twenty days after the date of service of the decision, order or ruling of the Commission, or within such further time as the Commission may allow upon request filed prior to the expiration of twenty days after the date of service of said decision, order or ruling. Within ten days after such petition has been filed, the appealing party shall enter the appeal in the Supreme Judicial Court sitting in Suffolk County by filing a copy thereof with the Clerk of said Court. (Sec. 5, Chapter 25, G.L. Ter. Ed., as most recently amended by Chapter 485 of the Acts of 1971).